

M. JOAN BRYAN  
MICHAEL RABATICH

IBLA 83-550

Decided October 6, 1983

Appeal from decision by California State Office, Bureau of Land Management declaring mining claim void. CA MC 120757.

Affirmed.

1. Mining Claims: Determination of Validity -- Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Land -- Withdrawals and Reservations: Effect of

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

APPEARANCES: M. Joan Bryan and Michael Rabatich, pro sese.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

M. Joan Bryan and Michael Rabatich appeal from the April 7, 1983, decision by the California State Office, Bureau of Land Management (BLM), declaring their Kelly Girl placer mining claim located in the SW 1/4 SE 1/4 of sec. 20, T. 11 N., R. 11 E., Mount Diablo meridian, to be null and void. The decision appealed from explains the reason for the action taken by BLM:

According to the official records of this office, the SW 1/4 SE 1/4 of Section 20, T. 11 N., R. 11 E., was classified for Multiple Use Management by Notice published in the Federal Register of December 21, 1967, Volume 32, No. 246, pages 20660 and 20661 (serial number CA 572). This classification segregated the above mentioned lands from all forms of appropriation under the public land laws, including the mining laws but not the mineral leasing laws.

Therefore, in view of the foregoing, the land embraced by the Kelly Girl placer mining claim was not subject to mineral location on January 26, 1983. Accordingly, the attempted location of this claim is hereby declared null and void ab initio.

In their statement of reasons filed in support of their appeal, appellants contend BLM's determination was in error when it found the land upon

which the Kelly Girl mining claim was located to be on withdrawn lands. The statement of reasons states:

Before formally filing the claim I checked all the microfilm on the 40 acres and also checked the latest notices that were hanging on the wall in the office.

We decided to file the claim on January 26, 1983 for I was able to (not easily) find in one of the notices on the wall the information that the 40 acres concerned was released and returned to the status of public domain.

Although not further explained, the reference to the notice on the office wall is an apparent reference to notice published at 48 FR 1828, 1829 (Jan. 14, 1983), which was relied upon by appellants in a statement of reasons included in their notice of appeal. The notice states, in pertinent part:

Pursuant to the Act of September 19, 1964, the following described lands were classified for multiple use management and segregated from appropriation under the agricultural land laws (43 U.S.C. Chapters 7 and 9; 25 U.S.C. 334), from sales under section 2455 of the Revised Statutes (43 U.S.C. 1171), and from appropriations under the United States mining laws (30 U.S.C. ch. 2):

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T. 11 N., R. 11 E., Sec. 20, SW 1/4 SE 1/4.

\* \* \* \* \*

Pursuant to the authority delegated to me by Bureau Order No. 701 of July 23, 1964 (29 FR 10528), I hereby revoke the Bureau of Land Management Classification Orders of December 21, 1967, and December 29, 1967, insofar as they affect the above described lands.

At 10 a.m. on February 17, 1983 the segregative effect imposed by the above mentioned classifications will terminate.

[1] Since appellants located their claim on January 26, 1983, their claim was premature because it was located, according to the terms of the location notice, during the time the land upon which location was attempted was withdrawn from the operation of the mining laws. The BLM notice of January 14, 1983, provided the SW 1/4 SE 1/4 of sec. 20 was to remain withdrawn from appropriation under the mining laws until February 17, 1983. Because the Kelly Girl mining claim was located, therefore, on land previously withdrawn from mineral entry, it was null and void ab initio. A mining claim may only be located upon land open to the operation of the mining laws. 30 U.S.C. § 22 (1976). George H. Fennimore, 63 IBLA 214 (1982). The California State Office correctly concluded that, under the circumstances, Kelly Girl was an invalid claim.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Franklin D. Arness  
Administrative Judge  
Alternate Member

We concur:

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Edward W. Stuebing  
Administrative Judge

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R. W. Mullen  
Administrative Judge

